

Attachment B to Resolution 03-20

FOR CONSIDERATION BY THE AIR RESOURCES BOARD AT THE PUBLIC HEARING ON THE PROPOSED AMENDMENTS TO THE CALIFORNIA CLEAN AIR ACT NONVEHICULAR SOURCE FEE REGULATIONS

JULY 24, 2003

Staff's Suggested Modifications to the Original Proposal

Note: This attachment shows the staff's suggested modifications to the originally proposed amendments. Only the portions containing the suggested modifications are included. The originally proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to show deletions. The suggested modifications are shown in double underline to indicate additions and ~~double strikeout~~ to show deletions. All proposed modifications will be made available to the public for a fifteen day comment period.

Subchapter 3.8. California Clean Air Act Nonvehicular Source, Consumer Products, and Architectural Coatings Fee Regulations

Amend section 90800.8, title 17, California Code of Regulations (CCR), to read as follows:

§ 90800.8. Fee Requirements for the ~~1997-1998~~ 2003-2004 and Subsequent Fiscal Years.

(a) *Applicability.*

(1) This subchapter applies to:

(A) Any facility that emits 250 tons or more ~~in a calendar year~~ annually of any nonattainment pollutant or precursor, as provided in section 90800.8(c)(4), and

(B) Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's consumer products or architectural coatings resulted in VOC emissions of 250 tons or more during a calendar year, as provided in section 90800.8(c)(5).

(2) (4) 1997-1998 2003-2004 Fiscal Year.

(A) Notification to Districts, Facilities, Consumer Products Manufacturers, and Architectural Coatings Manufacturers. No later than ~~15~~ 30 days after the operative date of this section, the ~~e~~Executive ~~e~~Officer shall provide written notice to each district, facility operator, consumer products manufacturer, and architectural coatings manufacturer of his/her ~~1997-1998 2003-2004~~ fiscal year fee determinations, as of ~~January 29, 1998 July 24, 2003~~, for all of the items in section (c)(1) through ~~(c)(6)~~ (c)(7). The written notices may reflect modifications to the determinations based on information received by the ~~e~~Executive ~~e~~Officer after ~~January 29, 1998 July 24, 2003~~, in which case the notices shall include a brief explanation of the modifications.

(B) Collection and Transmittal of the Fees to the State Board. Each district facility operator, consumer products manufacturer, and architectural coatings manufacturer that is notified by the Executive Officer that it must remit a specified dollar amount to the state board for the ~~1997-1998 2003-2004~~ fiscal year shall transmit that dollar amount to the state board by ~~June 15, 1998~~, for deposit into the Air Pollution Control Fund within ~~60~~ 30 days after receipt by the operator or manufacturer of the fee determination notice. ~~The amount transmitted shall be collected by the district from the facilities in the district that are identified in the executive officer's notification as meeting the criteria in section (c)(4).~~ The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(3) (2) 1998-1999 2004-2005 and Subsequent Fiscal Years. Sections (b) through (e) apply for the ~~1998-1999 2004-2005~~ fiscal year and for any subsequent fiscal year in which the state board is authorized by state law to ~~require districts to~~ impose additional permit fees on nonvehicular sources ~~within their jurisdiction~~, consumer products manufacturers, and architectural coatings manufacturers.

(4) Expenditure of Fees. The fees collected from facilities are to be expended by the state board only for the purposes of recovering costs of additional state programs related to nonvehicular sources. The fees collected from consumer products manufacturers and architectural coatings manufacturers are to be expended by the state board solely to mitigate or reduce air pollution in the state created by consumer products and architectural coatings.

(b) Submittal of Information by Districts. No later than April 1 of the preceding fiscal year, each district shall submit all of the information identified in section (c)(4) to the ~~e~~Executive ~~e~~Officer in writing.

- (c) *Preliminary Determination of Fees to be Assessed.* No later than May 1 of the preceding fiscal year, the ~~e~~Executive ~~e~~Officer shall make preliminary determinations of all of the items in section (c)(1) through ~~(c)(6)~~ (c)(7), and shall provide written notice of the preliminary determinations to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5). The notice shall state that written comments regarding the preliminary determinations received by the ~~e~~Executive ~~e~~Officer by ~~June~~ July 1 of the preceding fiscal year will be considered by the ~~e~~Executive ~~e~~Officer in reaching final determinations.

(1) *Needed Revenues.* The revenues needed to recover the costs of the state board for additional state programs related to nonvehicular sources, consumer products, and architectural coatings in the fiscal year. The revenues shall not exceed the amount authorized by state law for any fiscal year, and for the ~~1997-1998 and 1998-1999~~ 2003-2004 fiscal years shall not exceed ~~\$3,000,000~~ the amount specified in subdivision (f)(1) of Health and Safety Code section 39612 or such other amount as specified by the State Legislature. per fiscal year. For fiscal year 2004-2005 and subsequent fiscal years, the total revenues collected from facilities may include a percentage increase in revenues by an amount not to exceed the annual percentage change in the California Consumer Price Index, as provided in Health and Safety Code section 39612(f)(2), if such an increase is necessary to collect the revenues authorized by the State Legislature for any fiscal year.

(2) *Adjustment Amount.* An additional adjustment amount, not to exceed 3 percent of the needed revenues, designed to recover unforeseen reductions in collections due to unexpected business closures and bankruptcies.

(3) *Carry-over ~~Revenues~~ Balance.* The amount ~~of revenues~~ collected in the previous fiscal year in excess of or less than the needed revenues for that fiscal year.

(4)(A) *Emissions of Facilities Subject to Fees.* Except as otherwise provided in subsections (c)(4)(B) and (c)(4)(C). ~~f~~For each district, (1, ~~A~~ i) the name and address of each permitted facility that emitted ~~500~~ 250 tons or more of any nonattainment pollutant or precursor during the most recent calendar year for which emission estimates are available for all affected districts, and (2, ~~B~~ ii) the total tons of each identified facility's emissions during the referenced calendar year of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of ~~500~~ 250 tons or more in the year.

(B) For the South Coast Air Quality Management District (SCAQMD) only, the amount of each facility's emissions specified in subsection (C)(4)(A) shall be determined on a fiscal year instead of a calendar year basis. Emissions from facilities in the SCAQMD shall be determined for the fiscal year that begins during the most recent calendar year for which emission estimates are available for all affected districts. For example, if the 2001 calendar year is the most recent calendar year for which emission estimates are available for all affected districts, then all districts except the SCAQMD would identify facilities and submit facility emissions for the 2001 calendar year, and the SCAQMD would identify facilities and submit facility emissions for the 2001-2002 fiscal year.

(C) A facility shall not be included if its emissions would otherwise be included solely because the facility is in a district which is designated in section 60201 as not having attained the state ambient air quality standard for ozone solely as a result of ozone transport identified in section 70500, title 17, California Code of Regulations.

(5) *Consumer Products Manufacturers and Architectural Coatings Manufacturers Subject to Fees.* Any consumer products or architectural coatings manufacturer for which the total sales of the manufacturer's consumer products or architectural coatings resulted in VOC emissions in the State of 250 tons or more during the same calendar year identified for facilities pursuant to section 90800.8(c)(4)(A).

(5) (6) *Fee per ton.* The fee per ton for the fiscal year, calculated in accordance with the following formula:

$$\text{Fee per ton} = \frac{R + A - C}{E}$$

Where

R = The needed revenues identified in accordance with section (c)(1)

A = The adjustment amount identified in accordance with section (c)(2)

C = Carry-over ~~revenues~~ balance determined in accordance with section (c)(3)

E = The total tons of nonattainment pollutants or precursors individually emitted in annual amounts of ~~500~~ 250 tons or more from all permitted facilities in the state identified in accordance with section (c)(4), plus the total tons of VOCs emitted in annual amounts of 250 tons or more from consumer products and architectural coatings sold in the state as identified in accordance with section (c)(5).

~~(6)~~(7) Amount to be Remitted From Each District Facility Operator, Consumer Products Manufacturer, or Architectural Coatings Manufacturer. For each district, ~~the~~ The dollar amount to be transmitted to the state board, calculated in accordance with the following formula:

$$\text{Amount to be transmitted} = F * D$$

Where

F = Fee per ton as calculated in accordance with section ~~(c)(5)~~ (c)(6)

D = The tons of nonattainment pollutants or precursors individually emitted in annual amounts of ~~500~~ 250 tons or more from ~~all a~~ a permitted facility facilities in the district identified in accordance with section (c)(4), or the tons of VOCs emitted in annual amounts of 250 tons or more for a manufacturer, as identified in accordance with section (c)(5)

(d) *Final Determination of Fees to be Assessed.* No later than ~~July~~ August 1 of the fiscal year, after considering any comments submitted by ~~June~~ July 1 of the preceding fiscal year, the ~~e~~Executive ~~e~~Officer shall make final determinations of all of the items in section (c)(1) through ~~(c)(6)~~ (c)(7), and shall provide a written fee determination notice of the determinations to each district and to each facility operator, consumer products manufacturer, and architectural coatings manufacturer identified in accordance with section (c)(4) or (c)(5).

(e) *Collection and Transmittal of the Fees to the State Board.*

(1) Each ~~district~~ facility operator, consumer products manufacturer, and architectural coatings manufacturer that is notified pursuant to section (d) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board ~~by January 1 of the fiscal year,~~ for deposit into the Air Pollution Control Fund within 60 days after receipt of the fee determination notice as specified in section 90802(a). The amount transmitted shall be collected by the ~~district~~ state board from the facilities and manufacturers in the district that are identified in the ~~e~~Executive ~~e~~Officer's final determination as meeting the criteria in section (c)(4) or (c)(5). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(2) (A) Newly Identified Facilities: In addition to the amount transmitted in accordance with section (e)(1), ~~a district~~ the Executive Officer shall, for any facility identified by the ~~e~~Executive ~~e~~Officer as meeting the criteria in section (c)(4) after the ~~e~~Executive ~~e~~Officer's notification under section (d), ~~transmit to the state board~~ notify the facility operator and collect for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(5) (c)(6) multiplied by the total tons of the facility's emissions, during the calendar year used to determine emissions in accordance with section (c)(4), of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 500 250 tons or more in the year. The operator of each newly identified facility shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer. The amount transmitted shall be collected by the district state board from the newly identified facility, and shall be in addition to permit and other fees already authorized to be collected from the facility.

(B) Newly Identified Manufacturers. The Executive Officer shall, for any consumer products manufacturer or architectural coatings manufacturer identified by the Executive Officer as meeting the criteria in section (c)(5) after the Executive Officer's notification under section (d), notify the consumer products manufacturer or architectural coatings manufacturer and collect for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section (c)(6) multiplied by the total tons of VOCs emitted from consumer products or architectural coatings sold by such manufacturer during the calendar year used to determine emissions in accordance with section (c)(5). Each newly identified manufacturer shall transmit the assessed dollar amount to the state board within 60 days after receipt of the fee determination notice from the Executive Officer. The amount collected by the state board from the newly identified manufacturer shall be in addition to permit and other fees already authorized to be collected from the manufacturer.

NOTE: Authority cited: Sections 39600, 39601, ~~and~~ 39612, and 39613, Health and Safety Code.

Reference: Sections 39002, 39500, 39600, ~~and~~ 39612, and 39613, Health and Safety Code.

Amend section 90800.9 , title 17, CCR, to read as follows:

§ 90800.9. Optional Process for Districts to Collect Fees from Facilities.

- (a) Notwithstanding the provisions of sections 90800.8 and 90802, each district shall have the option for any fiscal year to collect fees from facilities within the district instead of having the state board collect the fees. A district that chooses to collect fees from facilities pursuant to this section shall follow the process set forth below in section 90800.9(b) or (c). For districts that do not choose to collect fees from facilities, the Executive Officer shall follow the process specified in sections 90800.8 and 90802. Districts shall not have the option to collect fees from consumer products manufacturers and architectural coatings manufacturers.
- (b) 2003-2004 Fiscal Year.
- (1) Notification. A district that chooses to collect fees from facilities for the 2003-2004 fiscal year shall notify the Executive Officer no later than 10 days after the operative date of this section. No later than 30 days after the operative date of this section, the Executive Officer shall provide written notice to each district and facility operator, as specified in section 90800.8(a)(2)(A).
- (2) Collection and Transmittal of Fees to the State Board. Each facility operator notified under section 90800.8(a)(2)(A) shall transmit the specified dollar amount to the district within ~~60~~ 30 days of notification. No later than ~~90~~ 60 days after notification under section 90800.8(a)(2)(A), each district shall transmit the fees to the state board for deposit in the Air Pollution Control Fund. The amount transmitted shall be collected by the district from all facilities in the district that are identified in the Executive Officer's notification. The fees shall be in addition to permit and other fees already authorized to be collected from such sources. Districts shall assess late fees and may recover administrative costs for the 2003-2004 fiscal year as provided in sections 90800.9 (c)(3) and (c)(4).
- (c) 2004-2005 and Subsequent Fiscal Years. A district that chooses to collect fees on facilities for the 2004-2005 fiscal year or any subsequent fiscal year shall notify the Executive Officer on or before April 1 of the preceding fiscal year, and the district and the Executive Officer shall follow the process set forth below in subsections (c)(1) through (c)(5).
- (1) Notification to Districts by the Executive Officer. No later than May 1 of the preceding fiscal year, the Executive Officer shall notify the district of the preliminary determination of fees to be assessed on each facility as provided in section 90800.8(c). No later than ~~July~~ August 1, the

Executive Officer shall notify the district of the final determination of fees to be assessed on each facility as provided in section 90800.8(d).

(2) *Notification to Facilities by the District.* Each district shall notify and assess the operator of each facility subject to permit fees, as provided for in this subchapter, in writing of the fee due. The fee shall be past due 60 days after receipt by the operator of the fee determination notice.

(3) *Late Fees.* Each district shall assess an additional fee on operators failing to pay the fee within 60 days of receipt of the fee determination notice. The district shall set the late fee in an amount sufficient to pay the district's additional expenses incurred by the operator's untimely payment.

(4) *Recovery of Administrative Costs.* Each district may recover administrative costs to the district of collecting the fees pursuant to this subchapter. At the request of the Executive Officer, a district shall provide to the Executive Officer, within 30 days of the request, substantiation of administrative costs.

(5) *Collection and Transmittal of Fees to the State Board.* Each district that is notified pursuant to section 90800.9(c)(1) that it must remit a specified dollar amount to the state board shall transmit that dollar amount to the state board by January 1 of the fiscal year for deposit into the Air Pollution Control Fund. The amount transmitted shall be collected by the district from the facilities in the district that are identified in the Executive Officer's final fee determination as meeting the criteria in section 90800.8(c)(4). The fees shall be in addition to permit and other fees already authorized to be collected from such sources.

(d) *Newly Identified Facilities.* In addition to the amounts transmitted in accordance with section 90800.9(b)(2) and (c)(5), a district shall, for any facility identified by the Executive Officer as meeting the criteria in section 90800.8(c)(4) after the Executive Officer's notification under section 90800.8(a)(2)(A) or 90800.8(d), transmit to the state board for deposit into the Air Pollution Control Fund the dollar amount equal to the fee per ton calculated using the formula in section 90800.8(c)(6) multiplied by the total tons of the facility's emissions, during the ~~calendar~~ year used to determine emissions in accordance with section 90800.8(c)(4), of all nonattainment pollutants or precursors that were individually emitted by the facility in an amount of 250 tons or more in the year. The operator of each newly identified facility shall transmit the assessed dollar amount to the district within 60 days after receipt of the fee determination notice from the Executive Officer. The amount transmitted shall be collected by the district from the newly identified facility, and shall be in addition to permit and other fees already authorized to be collected from the facility. The district shall transmit any fees received from the facility to the state board

by January 1 of the fiscal year, or, for fees received by the district on or after December 31, within 30 days after receiving the fees from the facility.

NOTE: Authority cited: Sections 39600, 39601, 39612, and 39613, Health and Safety Code. Reference: Sections 39002, 39500, 39600, 39612, and 39613, Health and Safety Code.

Amend subsection 90801(i), title 17, CCR, to read as follows:

§ 90801. Definitions.

For the purposes of this subchapter, the following definitions apply:

[Note: The only modifications proposed to section 90801 are the modifications to subsection (i), the definition of “Holding or parent company,” as shown below.]

- (i) “Holding or parent company” means any company that has control over another company. For the purposes of this subchapter, a company has control over another company if:
 - (A) the company directly or indirectly or acting through one or more other persons owns, controls, or has power to vote ~~25 percent or more of any class of~~ more than 50 percent of the voting securities of the other company; or
 - (B) the company controls in any manner the election of a majority of the directors or trustees or individuals exercising similar functions of the other company; or
 - (C) the company has the power to exercise, directly or indirectly, a controlling influence over the management or policies of the other company.

Amend section 90802, title 17, CCR, to read as follows:

§ 90802. Fee Payment and Collection.

- (a) ~~Each district~~ The Executive Officer shall notify and assess the operator of each facility, each consumer products manufacturer, and each architectural coatings manufacturer subject to permit fees ~~, as provided for in these regulations~~ in writing of the fee due, as provided in subsections (a)(2), (c), (d), and (e)(2) of section 90800.8. At the request of a holding or parent company, the Executive Officer shall provide separate written notice of their individual fee determinations to each consumer products or architectural coatings manufacturer within the holding or parent company. The fee shall be past due 60 days after receipt by the operator or manufacturer of the fee ~~assessment~~ determination notice, except for the 2003-2004 fiscal year, when the fee shall be past due 30 days after receipt of the fee determination notice as provided in section 90800.8(a)(2)(A).
- (b) Late Fees. ~~Each district~~ For the 2003-2004 fiscal year, the Executive Officer shall assess an additional fee on operators, consumer products manufacturers, and architectural coatings manufacturers failing to pay the fee within 30 days of receipt of the fee determination notice. For the 2004-2005 and subsequent fiscal years, the ~~The Executive Officer~~ shall assess an additional fee on operators, consumer products manufacturers, and architectural coatings manufacturers failing to pay the fee within 60 days of receipt of the fee ~~assessment~~ determination notice. The ~~district~~ Executive Officer shall set the late fee in an amount sufficient to pay the ~~district's~~ state board's additional expenses incurred by the operator's or manufacturer's untimely payment.
- (c) Any fees submitted to the state which exceed or are less than the costs to the state of additional state programs authorized or required by the ~~California Clean Air Act of 1988, related to nonvehicular sources~~ State Legislature shall be carried over by the state for ~~expenditure for these purposes~~ adjustment to the fees assessed in the subsequent fiscal year.
- (d) ~~Each district may recover administrative costs to the district of collecting the fees pursuant to these regulations. At the request of the State Board, a district shall provide to the State Board, within 30 days of the request, substantiation of administrative costs.~~

NOTE: Authority cited: Sections 39600, 39601, ~~and~~ 39612, and 39613, Health and Safety Code.
Reference: Sections 39002, 39500, 39600, ~~and~~ 39612, and 39613, Health and Safety Code.

